



CASE VA/H-33198

FILING BY "EXPRESS MAIL" UNDER 37 CFR 1.10	
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF

KNAPE ET AL.

APPLICATION NO: 09/776,787

FILED: FEBRUARY 4, 2001

FOR: INACTIVATED BOVINE SCOURS VACCINES, PROCESS AND  
METHOD OF PREVENTING BOVINE SCOURS

Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

LETTER REGARDING SHORTENING OF PATENT TERM ADJUSTMENT

Sir:

The Office issued a Notice of Allowance for the above referenced patent application on June 6, 2005. The Office determined that the Patent Term Adjustment under 35 U.S.C. § 154(b) is 683 days. The undersigned believes that the correct Patent Term Adjustment is 652 days.

MPEP § 2733 states in part:

If a registered practitioner receives a notice of allowance with a patent term adjustment that is longer than expected, the practitioner should disclose the error to the Office in compliance with the practitioner's duty of candor and good faith in practice before the Office. Where the correct patent term adjustment is thought to be less than indicated by the Office, an application for term adjustment under 37 C.F.R. § 1.705(b) need not be filed. Instead, a letter could be filed with the issue fee payment, indicating that the term adjustment is thought to be longer than appropriate.

As such, please accept this letter in fulfillment of MPEP § 2733 because the undersigned believes that the USPTO incorrectly gave the Applicants too many days for the Patent Term Adjustment. Enclosed is a sheet indicating the undersigned's calculations. In short, the Office


did not deduct 31 days from the Applicants because of Applicants' delay in submitting a signed Declaration and Power of Attorney. The Notice of Missing Parts issued on April 30, 2001. Applicants had until July 30, 2001 to submit the Declaration and Power of Attorney without being deducted days for delay. Instead, Applicants submitted the Declaration and Power of Attorney on August 30, 2001, thirty-one (31) days late.

The USPTO delays were a total of 683 days. When one subtracts the Applicants delay of 31 days, one gets a Patent Term Adjustment of **652 days** owed to the Applicants.

It is the undersigned's understanding that under MPEP § 2733 no fee is required. It is noted that this Letter is being filed concurrently with the payment of the Issue Fee for this application, per MPEP § 2733. Should the Office feel that a fee is required, the Commissioner is authorized to deduct the appropriate fee from Deposit Account 19-0134.

Respectfully submitted,

Novartis  
Corporate Intellectual Property  
One Health Plaza, Building 104  
East Hanover, NJ 07936-1080  
(862) 778-7922

  
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David L. Marks  
Attorney for Applicants  
Reg. No. 37,881

Date: August 1, 2005

Case No. VA/H-33198P1Appln. No. 09/776,787**Patent Term Adjustment Chart**

Event Description	Date of Event	Time Allowance	Met Time Frame? (Yes or No)		Adjustment - No. of Days	
			PTO	Novartis	PTO (+)	Novartis (-)
U.S. filing (after 5/28/00)	2/4/2001	-----				
Non-Substantive First OA	4/30/2001	-----				
Response to OA	8/30/2001	3 months from OA		no		31
First OA	6/27/2003	14 months from filing date	no		449	
Response to OA	8/26/2003	3 months from OA		yes		
Subsequent OA	10/1/2003	4 mo. from Response	yes			
Response to OA	12/15/2003	3 months from OA		yes		
Subsequent OA (Allowance)	3/24/2004	4 mo. from Response	yes			
Response to OA (RCE)	6/15/2004	3 months from OA		yes		
Subsequent OA		4 mo. from Response				
Response to OA		3 months from OA				
Notice of Allowance	6/6/2005	4 mo. from Response or 14 mos. from filing date if <u>first</u> substantive action	no		234	
(Drawings/312 Amendment/ Resp. to Examiners Reasons for Allowance/etc.)		See Footnote Below *				
Response from PTO (for 312 Amendment/Drawings/etc.)		See Footnote Below *				
Issue Fee Paid	8/1/2005	3 months from NOA		yes		
Issued		4 mo. from Issue Fee Paid				
		3 years from filing date**			***	***

**"Initial" PTA**

PTO Deficient =	+	683	days
Novartis Deficient =	-	31	days
Initial Adjustment =		652	days

**"Final" PTA**

PTO Deficient =	+		days
Novartis Deficient =	-		days
Final Adjustment =			days

\* PTA PENALTY FOR FILING AFTER THE NOTICE OF ALLOWANCE: **Drawings:** 4 months (120 days) from date of their filing (even if requested by the Examiner) unless a response is received from the PTO **312 Amendments:** penalty starts on the date the amendment is mailed and ends on the date of the Office Action/Notice in response or 4 months (120 days) whichever is shorter; **Response to Examiner's Reasons for Allowance and Request for PTA** no reduction/penalty of time.

\*\* This calculation does not apply to applications with RCE's as they are not required to issue within 3 years. All other PTA/PTE calculations are not affected.

\*\*\* No Overlap allowed - We get the greater of the 2 possibilities.